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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKITOSHI KOJIMA and YASUHIKO TSUDA

Appeal 2010-002405
Application 09/995,652
Technology Center 3600

Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN, and BIBHU R.
MOHANTY, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1-16. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6 (2002).

The claimed invention is generally directed to systems and methods for merchandise retail management, and a portable terminal for use in stores retailing commodities to customers and the like (Spec. 1). Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A merchandise retail management method comprising the steps of:

putting a tag on display together with a sample commodity in a display area, commodity information including an identification code of the commodity, being allowed to be read from and written to the tag;

lending out a portable terminal capable of reading the tag to a customer entering the display area;

reading the commodity information from the tag, which is put on display together with the corresponding sample commodity, with the portable terminal when the customer indicates an interest in purchasing the commodity;

storing the corresponding commodity information in the portable terminal and relaying it to an information-processing apparatus for merchandise management and sales management;

comparing at the information-processing apparatus the commodity information which has already been relayed to the information-processing apparatus, with commodity information which is sent from the portable terminal to a POS apparatus at a sales counter and is then entered into the information-processing apparatus;

the customer returning the portable terminal when leaving; and

handing over the commodity to the customer after the commodity to be sold has been prepared in accordance with the comparison result of commodity information at the information-processing apparatus.

Claim 14 stands rejected under 35 U.S.C. § 102(b) as anticipated by Trotta (US Pat. 5,595,264, iss. Jan. 21, 1997); claims 1-13 stand rejected 35 U.S.C. § 103(a) as unpatentable over Trotta in view of Garver (US Pat. 7,114,656 B1, iss. Oct. 3, 2006); and claims 15 and 16 stand rejected 35 U.S.C. § 103(a) as unpatentable over Trotta in view of Garver and Murrah (US Pat. 5,804,807, iss. Sep. 8, 1998).

We REVERSE.

ISSUES

Did the Examiner err in asserting that optical scanner 23 of Trotta corresponds to the “tag reader for reading via radio waves,” as recited in independent claim 14?

Did the Examiner err in asserting that portable scanner 14, in-store computer 20, and scanner terminal/base station 18 of Trotta can respectively correspond to the portable terminal, information-processing apparatus, and the POS apparatus at a sales counter recited in independent claims 1 and 3?

FINDINGS OF FACT

Trotta

Trotta discloses that when the customer has completed their shopping, they return the scanner to its holder and receive in exchange the return of their credit card, a receipt showing the total amount debited thereto for the selected items, and the appropriate bag or box number or code which will contain the purchased items. Thus, Trotta discloses that when the selected items are scanned, the in-store computer records the purchase to the customer's account and the receipt. Then, once the customer has finished

shopping and returned the scanner to its holder, the customer pushes a button on the scanner to confirm the final purchase of the scanned items and the computer debits the total purchase to the customer's payment card (col. 2, l. 67 through col. 3, l. 15).

Portable scanner 14 includes an optical scanner 23 which transmits the encoded bar code indicia information to a microprocessor 25, as diagrammatically shown in Figure 4. Keypad buttons 24, 26, 28 also communicate the customer's selection to the microprocessor 25. Microprocessor 25 then transmits this received information to the in-store computer 20 by way of a transceiver 40 and transaction encoder/decoder 42. Computer 20 processes this information and returns the appropriate signal to microprocessor 25 such that the customer is correctly informed of their shopping purchase (col. 4, ll. 30-40).

The customer returns to the scanner terminal 18 and replaces the scanner 14 in the holder 16 from which he originally removed it. Thereafter, the customer's payment card 10 is released for return to the customer and a receipt of the total purchases is printed for the customer (col. 6, ll. 2-8).

Trotta also discloses that the payment card 10 may be used for identification of the customer during his shopping and the total purchase price of the items is deducted from the customer's account at completion of the shopping. As the selected items are scanned, the in-store computer 20 records the purchase to the customer's account and the receipt. Then, once the customer has finished shopping and returned the scanner 14 to its holder 16, the display panel 22 will ask the customer to confirm the final purchase

total by pressing the green button 24. Once actuated, the computer 20 debits the total purchase to the customer's payment card 10, and a receipt is issued to the customer (col. 6, ll. 20-32).

Garver

Figure 1B of Garver, which includes a network arrangement between PT 50, POS store controller 31, and self-checkout POS station with PT interface 40, is set forth below.

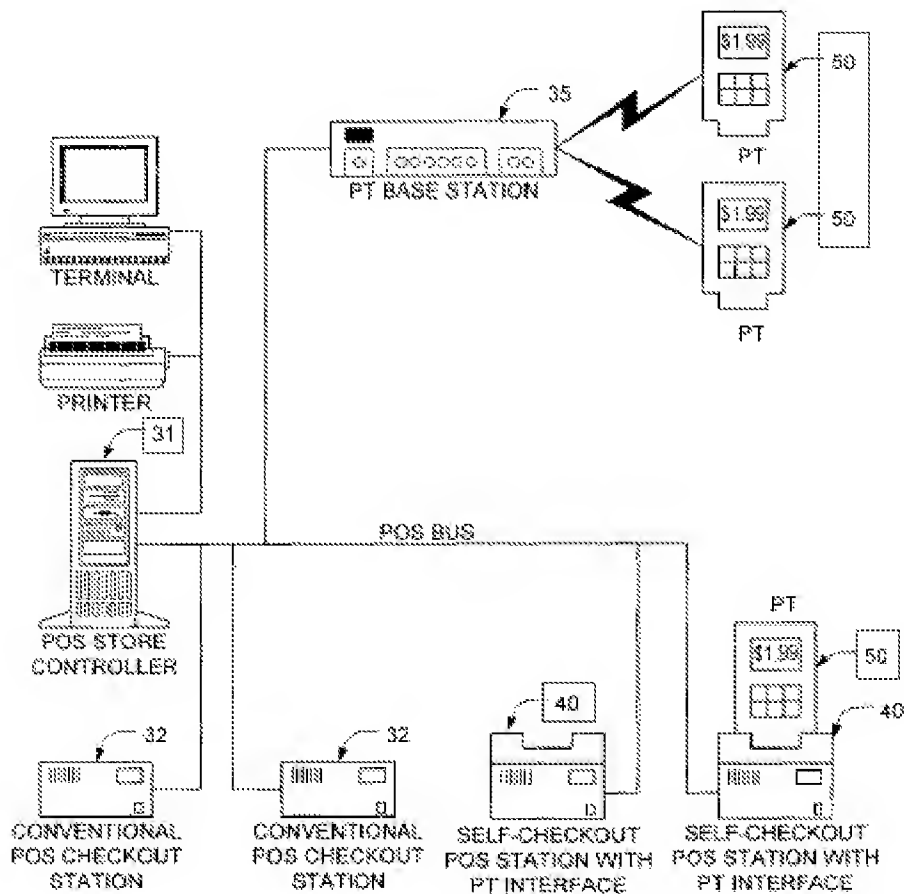


FIG. 1B

ANALYSIS

Independent Claim 14

We are persuaded the Examiner erred in asserting that optical scanner 23 of Trotta corresponds to the “tag reader for reading via radio waves,” as recited in independent claim 14 (App. Br. 6-9; Reply Br. 3-7). Independent claim 14 recites “a tag reader for reading radio waves commodity information written onto a wireless tag.” Portable scanner 14 of Trotta includes optical scanner 23 (col. 4, ll. 30-31). Optical scanner 23 of Trotta cannot correspond to the recited “tag reader for reading via radio waves,” as asserted by the Examiner, as the Examiner has not shown that optical scanner 23 can read radio waves. Accordingly, we cannot sustain this rejection.

Claims 1-13, 15, and 16

We are persuaded the Examiner erred in asserting portable scanner 14, in-store computer 20, and scanner terminal/base station 18 of Trotta can respectively correspond to the portable terminal, information-processing apparatus, and the POS apparatus at a sales counter recited in independent claims 1 and 3 (App. Br. 9-20; Exam’r’s Ans. 5-6, 12-15; Reply Br. 7-10). Each of independent claims 1 and 3 recite the information-processing apparatus comparing commodity information received from two paths: (1) directly from the portable terminal and (2) indirectly from the portable terminal via the POS apparatus at the sales counter. Trotta discloses that portable scanner 14 only sends commodity information to in-store computer 20 (col. 3, ll. 8-11; col. 4, ll. 30-37). Trotta does not disclose that portable scanner 14 sends commodity information to scanner terminal/base station

18, and thus no such information could be sent on from scanner terminal/base station 18 to in-store computer 20 for comparison, as recited in independent claims 1 and 3.

The Examiner asserts that “[o]ne of ordinary skill in the art would have recognized that the information that is scanned by the portable device is transmitted ... to the base station, i.e.,] POS apparatus, in order to charge the credit card that is stored therein” (Exam’r’s Ans. 13). Even assuming, however, that portable scanner 14 does send commodity information to scanner terminal/base station 18, Trotta does not disclose that scanner terminal/base station 18 sends the commodity information on to in-store computer 20 for comparison, as recited in independent claims 1 and 3. If anything, Trotta discloses the opposite, as commodity information is sent from in-store computer 20 to scanner terminal/base station 18 for the printing of a receipt (col. 2, l. 67 through col. 3, l. 4; col. 6, ll. 5-8).

The Examiner also asserts that

a comparison must be made since the file that is stored at the in-store computer must contain some type of identifier, which would identify the scanner with the customer, and when the scanner is placed back at the scanner terminal another type of identifier must then be transmitted from the scanner terminal to the in-store computer in order to compare that the two identifiers are the same in order to release the customer's payment card and the printing of the receipt of the total purchases.

(Exam’r’s Ans. 13-14). However, the only information sent from scanner terminal/base station 18 to in-store computer 20 in this sequence is whether portable scanner 14 has been placed in holder 16, which would not include commodity information (col. 6, ll. 2-8, 26-29).

The Examiner additionally asserts that “the commodity information that is being tracked by the information processing apparatus must match up with the commodity information that is being charged to the credit card at the base station” (Exam’r’s Ans. 14). However, Trotta discloses that all commodity information follows a single path from portable scanner 14 to scanner terminal/base station 18 via in-store computer 20. All commodity information within that single path would “match.”

The Examiner further asserts that

if one were to continue to argue that Trotta fails to disclose the limitation of transmitting information from a portable device to a POS apparatus one of ordinary skill in the art looking upon Garver would have found it obvious to transmit information from a portable terminal to an information processing apparatus and a POS apparatus (self-checkout station; see at least Col. 6[,] Lines 2-8; Figure 1A, Figure 1B #50 Portable Device, #40 POS apparatus, #31 information processing apparatus).

(Exam’r’s Ans. 14). Even assuming, however, that Figure 1B of Garver discloses sending commodity information along both paths (directly from PT 50 to POS store controller 31, and indirectly from PT 50 to POS store controller 31 via self-checkout POS station with PT interface 40), the Examiner still has not shown that either in-store scanner 20 of Trotta or POS store controller 31 of Garver makes a comparison of commodity information received from the different paths, as recited in independent claims 1 and 3. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992) (during examination, the examiner bears the initial burden of establishing a prima facie case of obviousness).

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The decision of the Examiner is REVERSED.

REVERSED

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